



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 S. STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

June 23, 2006

L. Vincent Ramunno, Esquire
Ramunno, Ramunno & Scerba, P.A.
903 North French Street
Wilmington, DE 19801-3399

Jeffrey M. Weiner, Esquire
Law Offices of Jeffrey M. Weiner
1332 King Street
Wilmington, DE 19801

Re: Ramunno, et al. v. Capano, et al.
C.A. No. 18798-NC
Date Submitted: March 23, 2006

Dear Counsel:

I write to address the question of prejudgment interest. The parties, in the process of working out an order to implement the Court's opinions of February 10, 2006, and February 23, 2006, have come to an impasse on this question.¹ The Court, therefore, must determine the appropriate interest rate and whether it is to be simple or compound.

The Petitioner proposes a rate of 9.5%, the legal rate at the time of the freeze-out merger giving rise to this action. The Respondents suggest a blended

¹ I do not understand the question of costs to have been submitted.

L. Vincent Ramunno, Esquire
Jeffrey M. Weiner, Esquire
June 23, 2006
Page 2

rate, reflecting the reduction (until recently) in the legal rate over the period at issue. All parties have proposed simple interest.

The Court's monetary award was a remedy for a breach of an equitable duty. Although not an appraisal action as such, this matter was tried in a manner consistent with an appraisal action and the ultimate purpose was to establish fair value.

The Petitioner relies upon *Rollins Environmental Services, Inc. v. WSMW Industries, Inc.*² for the proposition that the rate of interest is calculated "as of the date of commencement of interest liability and it remains fixed at that rate."³ The Court, in *Rollins Environmental*, however, specifically recognized that interest, in matters falling within equity's jurisdiction, may be set through the exercise of the Court's discretion and, thus, it is not required that a fixed rate be established.⁴ Given the nature of this action, the interest rate should be determined through the exercise of the Court's discretion. Thus, I decline to award interest at a legal rate fixed by reference only to the rate at the time of the merger.

² 426 A.2d 1363 (Del. Super. 1980).

³ *Id.* at 1368.

⁴ *See id.* at 1366.

L. Vincent Ramunno, Esquire
Jeffrey M. Weiner, Esquire
June 23, 2006
Page 3

Typically, interest, in matters of this nature, is awarded with two goals in mind: “The first is to require the respondent to disgorge any benefit it received from its use of the [p]etitioner’s funds. The second is to compensate the [p]etitioners for the loss of use of its money.”⁵ Accordingly, the Court is to consider the Respondents’ cost of borrowing and, based upon a prudent investor standard, the opportunity cost to Petitioner because of not having been paid. However, where (as here) the evidence is insufficient to enable the Court to utilize that approach, the legal interest rate can serve as a default rate for pre-judgment interest.⁶ Thus, the Court has little choice but to look to the legal rate as it has varied from time to time since the merger. That rate (or, more accurately, a combination of those rates) is fair and accurate in the circumstances to determine the appropriate rate for calculation of pre-judgment interest. As a consequence, the Court accepts the methodology of calculating pre-judgment interest set forth in Mr. Weiner’s letters of February 26, 2006, and March 23, 2006.

⁵ *Prescott Group Small Cap, L.P. v. The Coleman Co., Inc.*, 2004 WL 2059515, at *33 (Del. Ch. Sept. 8, 2004). These reasons frequently support an award of compound interest. I will be guided, however, by the parties’ choice of simple interest.

⁶ *See id.*

L. Vincent Ramunno, Esquire
Jeffrey M. Weiner, Esquire
June 23, 2006
Page 4

I trust that this will be sufficient guidance for counsel to come to closure with respect to the form of the implementing order.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Robert A. Penza, Esquire
Register in Chancery-NC